IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9081 OF 2004

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Datta T. Ghodke ...Petitioner

v/s.

Subhash N. Walhekar ...Respondent

...

Shri A.R.Shaikh i/b R.D. Metkar for the Petitioner.

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CORAM: D.K.DESHMUKH, J.

DATED: 8TH APRIL,2005

P.C.:

1. It is true that in view of the judgment of the Division Bench in the case of Chintaman Sukhdeo

Kaklji & ors.v/s. Shivaji Bhausaheb Gadhe & ors, 2004 (4) Mh.L.J. 739, time limit of 90 days under Rule 1 Order 8 of CPC is not mandatory. Even assuming that the provision is directory, substantial compliance of that provision will have to be shown. The Division Bench has also held that the written statement can be permitted to be filed beyond the period of 90 days in exceptional and extra-ordinary cases.

2. In so far as the present case is concerned, the reason that was given for not filing the written statement within 90 days is misunderstanding about the further date for filing the Written Statement. Whose misunderstanding it was, whether it was the lawyer's misunderstanding or whether it was the misunderstanding of the Defendant. It is also not stated as to why application for extension of time was not moved. In the application it is mentioned that an affidavit in support of the application is filed with the application, but a copy of that affidavit is not produced on record. It is true that consequences of not permitting the Defendant to file the written statement are harsh, but considering the law and judgment of the Division, unless exceptional

and extraordinary circumstances are made out, Written Statement cannot be permitted to be filed after expiry of period of 90 days. By no stretch of imagination it can be said that the circumstances that have been disclosed by the Petitioner in the application at Exh.A are either exceptional or extraordinary. Petition is, therefore, rejected.

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